

Message Text

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ACTION NEA-10

INFO OCT-01 EUR-12 ISO-00 NEAE-00 CIAE-00 DODE-00
PM-05 H-01 INR-10 L-03 NSAE-00 PA-01 SP-02 SS-15
ICA-11 NSCE-00 SSO-00 ICAE-00 INRE-00 COME-00
EB-08 LAB-04 SIL-01 HA-05 SES-02 SAA-01 IO-13
TRSE-00 OMB-01 /106 W
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O R 171345Z AUG 78
FM AMEMBASSY TUNIS
TO SECSTATE WASHDC IMMEDIATE 2187
INFO AMEMBASSY ALGIERS
AMEMBASSY BRUSSELS
AMEMBASSY PARIS
AMEMBASSY RABAT
AMEMBASSY TRIPOLI

C O N F I D E N T I A L TUNIS 5803

BRUSSELS FOR USEC/LABATT

PARIS FOR LABATT

E.O.11652: GDS
TAGS: PINR, ELAB, TS
SUBJ: SOUSSE COURT DECISION PRESENTS MAJOR QUESTIONS;
GOT GIVES NO ANSWERS

REF: TUNIS 5762

1. AUGUST 15 DECISION OF SOUSSE CRIMINAL COURT OF APPEALS
CONTINUES TO BE MAJOR TOPIC OF DISCUSSION AND SPECULATION
IN TUNISIA, BUT GOT HAS MADE NO OFFICIAL COMMENT.

2. COURT'S RULING HAD NOT BEEN PUBLISHED IN ANY TUNISIAN
PAPER ALTHOUGH IT IS PRESUMABLY A PUBLIC DOCUMENT.
GOVERNMENT-OWNED DAILY LA PRESSE DID NOT MAKE ANY COMMENT
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ON SOUSSE DESICION IN TIS AUGUST 17 EDITION, ALTHOUGH
IT DID CARRY TWELVE LINES NOTING COURT'S RULING DAY BEFORE.
GOVERNMENT - OWNED RADIO AND TELEVISION HAVE STILL TO
MENTION THAT TRIAL HAS ENDED. IN CONTRAST, ITALIAN
TELEVISION, WHICH IS RELAYED TO TUNISIA, GAVE ACCOUNT OF
COURT'S RULING ON EVENING NEW AUGUST 16. PARTY-OWNED
L'ACTION, TYPICALLY QUICKER TO RESPOND THAN PLODDING

GOVERNMENT-OWNED MEDIA, DID CARRY FRONT PAGE EDITORIAL ON SOUSSE DECISION THIS MORNING, FOLLOWING BRIEF ITEM ON COURT'S DECISION DAY BEFORE.

3. ARTICLE CLAIMS THAT RULING, WHICH WILL PROBABLY BE RECALLED IN TIME AS NOTHING MORE THAN MINOR "PROCEDURAL INCIDENT," IS AT SAME TIME PROF THAT TUNISIAN JUSTICE IS TRULY INDEPENDENT. HOWEVER, EDITORIAL GIVES NO INDICATION OF WHAT COURSE OF ACTION GOVERNMENT NOW PLANS TO FOLLOW. MAIN FOCUS SEEMS TO BE REJECTION OF INTERPRETATION (CITED AS REPORTED IN L'HUMANITE AND LE MONDE) THAT COURT'S RULING REPRESENTS "POLITICAL DISAVOWAL OF GOVERNMENT."

4. TO INTERPRET THIS AS MORE THAN A PROCEDURAL QUESTION, L'ACTION CLAIMS, REVEALS "ILLEGITIMATE SUSPICION AND SYSTEMATIC DISPARAGEMENT." ARTICLE NOTES THAT PRIME MINISTER HAS OFTEN SAID THAT WHILE GOVERNMENT MIGHT CHARACTERIZE CRIMES AS POLITICAL, DECISION COULD ONLY BE MADE BY JUDICIARY. IT WAS TO CREDIT OF GOVERNMENT TO PUT MATTER BEFORE ORDINARY COURTS RATHER THAN STATE SECURITY COURT AND TO HAVE HELD TO POLICY OF NON-INTERFERENCE IN COURSE OF JUSTICE. IF COURT DID NOT ACCEPT COMPETENCE TO RENDER A DECISION, THIS SIMPLY PROVES ITS INDEPENDENCE. IF COURT WANTED TO DISAVOW PROSECUTION'S CASE, IT SHOULD HAVE DONE SO. IF THE WITHDRAWAL OF THE CONFIDENTIAL

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SOUSSE COURT REPRESENTS ANY DISAVOWAL, IT APPLIES EQUALLY TO THE PROSECUTION AND THE DEFENSE.

5. ABOVE SUMMARY IS ADMITTEDLY CONTRADICTORY BUT EDITORIAL IN COMPLETE TEXT IS EVEN MORE SO. SOME SECTIONS ARE INCOMPREHENSIBLE. L'ACTION EDITORIAL AND ABSENCE OF COMMENT IN LA PRESSE WOULD SEEM TO SUPPORT OUR INITIAL OBSERVATION IN REFTTEL, I.E. THAT THE GOVERNMENT AND PARTY WERE CAUGHT OFF GUARD BY COURT'S ACTION.

6. EMBASSY DOES NOT KNOW HOW OR UPON WHAT GROUND RULING WAS REACHED, BUT AT LEAST THREE (A MAJORITY) OF FIVE JUDGES ON BENCH HAD TO AGREE. POSSIBLE REASONS FOR NON-COMPETENCE RULING COULD BE:

- (A) POOR QUALITY OF CASE AND EVIDENCE PRESENTED BY PROSECUTION;
- (B) PERSONAL DISINCLINATION OF COURT TO BEAR RESPONSIBILITY OF RESCUING GOVERNMENT'S CHESTNUTS IN POLITICAL AFFAIR; AN
- (C) CONCERN FOR GENERALLY GOOD REPUTATION OF TUNISIAN JUDICIARY AS AN INDEPENDENT AND IMPARTIAL INSTITUTION.

7. WHATEVER ITS REASONS, COURT PRESUMABLY BELIEVES IT CAN JUSTIFY RULING ON LEGAL AND PROCEDURAL GROUNDS IN EVENT GOVERNMENT SHOULD DECIDE TO APPEAL RULING TO COURT OF CASSATION (SUPREME COURT). IN THIS CASE, COURT OF CASSATION COULD EITHER AGREE WITH SOUSSE COURT'S FINDING, OR RETURN CASE TO SOUSSE FOR RETRIAL UNDER NEW TEAM OF JUDGES.

8. THERE ARE OTHER ALTERNATIVES HOWEVER. GOVERNMENT COULD ACCEPT SOUSSE COURT'S VIEW WITH MINISTER OF JUSTICE CALLING SPECIAL STATE SECURITY COURT INTO SESSION IN TUNIS. CASE COULD START SEVEN DAYS AFTER THAT DATE. RIGHT OF APPEAL EXISTS.

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9. ANOTHER ALTERNATIVE IS POSSIBLE, ALTHOUGH WE HESITATE TO SPECULATE ON ITS PROBABILITY. THAT IS THAT THE CASE AGAINST THE 101 SOUSSE DEFENDANTS MIGHT BE DISMISSED OR SIMPLY NEVER HEARD. THIS WOULD POSE DIFFICULTIES, HOWEVER, UNLESS CHARGES ALSO WERE DROPPED AGAINST ACHOUR AND THE OTHER ELEVEN EX-EXECUTIVE BUREAU MEMBERS. IF THIS WERE TO TAKE PLACE, SOMEONE WOULD CERTAINLY BE CALLED ON THE CARPET TO ANSWER FOR THE EMBARRASSING MESS WHICH HAD BEEN MADE OF THIS AFFAIR.
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: PRESS COMMENTS, COURT DECISIONS, LABOR UNIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 17 aug 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978TUNIS05803
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Expiration:
Film Number: D780336-0728
Format: TEL
From: TUNIS
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780851/aaaabqvf.tel
Line Count: 146
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: b4087061-c288-dd11-92da-001cc4696bcc
Office: ACTION NEA
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: 78 TUNIS 5762
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 05 jul 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 1703910
Secure: OPEN
Status: NATIVE
Subject: SOUSSE COURT DECISION PRESENTS MAJOR QUESTIONS; GOT GIVES NO ANSWERS
TAGS: PINR, ELAB, PGOV, SOPN, TS
To: STATE
Type: TE
vdkgvwkey: odbc://SAS/SAS.dbo.SAS_Docs/b4087061-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014